

## **Senate Bill No. 141**

### **CHAPTER 57**

An act to amend Section 699.720 of the Code of Civil Procedure, to amend Sections 1113, 15642, 17001, 17005, 17051, 17052, 17054, 17061, 17100, 17101, 17103, 17154, 17158, 17201, 17250, 17251, 17252, 17254, 17301, 17303, 17350, 17352, 17356, and 17450 of the Corporations Code, to amend Section 3351 of the Labor Code, and to amend Sections 18633.5 and 23092 of the Revenue and Taxation Code, relating to limited liability companies, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 5, 1996. Filed with  
Secretary of State June 6, 1996.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**SB 141, Beverly. Limited liability companies.**

Existing law requires the filing of the articles of organization of limited liability companies with the Secretary of State.

This bill would also provide for filings with county recorders, as specified, thereby imposing a state-mandated local program.

Existing law provides that a person may acquire a membership interest directly from a limited liability company either in accordance with the company's operating agreement or, if there is no provision in the operating agreement, on the vote of all members of the company.

This bill would provide instead that if a person seeks to acquire a membership interest, and the operating agreement does not provide for this event, the person must obtain the vote of a majority in interest of the members.

Existing law provides that an employer may not require an employee to invest in the business of the employer as a part of the consideration for employment. Existing law also provides that any property put up by an employee as part of a contract of employment shall be deemed to be a bond usable only for liquidating accounts between the employer and employee, and shall not be commingled with the property of the employer.

This bill would provide that these provisions do not apply to membership interests issued by limited liability companies to employees under specified conditions.

Existing law provides for the withdrawal of a member of a limited liability company.

This bill would revise provisions governing the effect of the withdrawal of a member.

Existing law provides that a membership or economic interest in a limited liability company is assignable with the unanimous vote of the members, except as provided.

This bill would provide that a membership or economic interest may be assigned with the consent of a majority in interest of the members.

Existing law provides that a decision to continue the business of the limited liability company after dissolution of the company requires the unanimous vote of all members of the company.

This bill would delete the requirement that this vote be unanimous so that, instead, the consent of a majority in interest of the members would be required.

Existing law provides that in order to dissolve a limited liability company, the company shall file a certificate of cancellation of articles of organization with the Secretary of State identifying, among other things, the party that will be responsible for assuming any tax liability of the dissolved company.

This bill would require the Secretary of State to notify a limited liability company filing the certificate of cancellation that the company will be dissolved only if the Franchise Tax Board notifies the Secretary of State that certain taxes and fees imposed on the company have been paid or secured.

Existing law provides that the organization, internal affairs, and related matters of a foreign limited liability company are governed by the laws of the state where the company is organized.

This bill would provide that if the company is organized in a foreign country, these matters would be governed by the laws of that country.

Existing law requires a limited liability company to pay the income tax liability of a nonresident member of the company if the company does not attach to its income tax return a form containing the agreement of each nonresident member to be subject to personal jurisdiction for income tax purposes, as specified.

This bill would provide that a limited liability company is subject to penalties and interest if it is required to pay the income tax liability of a nonresident member but fails to do so.

The bill would also make clarifying and technical changes. It would declare that it shall not be construed to permit a domestic or foreign limited liability company to render professional services in this state, as defined.

The bill would also declare the intent of the Legislature that existing business entities should be permitted to convert into or transfer real property to limited liability companies without incurring a documentary transfer tax, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that is it to take effect immediately as an urgency measure.

*The people of the State of California do enact as follows:*

SECTION 1. Section 699.720 of the Code of Civil Procedure is amended to read:

699.720. (a) The following types of property are not subject to execution:

(1) An alcoholic beverage license that is transferable under Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code.

(2) The interest of a partner in a partnership or member in a limited liability company if the partnership or the limited liability company is not a judgment debtor.

(3) A cause of action that is the subject of a pending action or special proceeding.

(4) A judgment in favor of the judgment debtor prior to the expiration of the time for appeal from the judgment or, if an appeal is filed, prior to the final determination of the appeal.

(5) A debt (other than earnings) owing and unpaid by a public entity.

(6) The loan value of an unmatured life insurance, endowment, or annuity policy.

(7) A franchise granted by a public entity and all the rights and privileges of the franchise.

(8) The interest of a trust beneficiary.

(9) A contingent remainder, executory interest, or other interest in property that is not vested.

(10) Property in a guardianship or conservatorship estate.

(b) Nothing in subdivision (a) affects or limits the right of the judgment creditor to apply property to the satisfaction of a money judgment pursuant to any applicable procedure other than execution.

SEC. 2. Section 1113 of the Corporations Code is amended to read:

1113. (a) Any one or more domestic corporations may merge with one or more domestic other business entities or one or more foreign other business entities. One or more foreign corporations may be parties to the merger. Any corporation or corporations and any one or more other business entities may merge with or into a corporation, which may be any one of the corporations, or they may merge with or into an other business entity, which may be any one

of the other business entities. Notwithstanding the provisions of this section, the merger of any number of corporations with any number of other business entities may be effected only if:

(1) In a merger in which a domestic other business entity is a party to the merger the domestic other business entity is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party to the merger the foreign corporation is authorized by the laws under which it is organized to effect that merger.

(3) In a merger in which a foreign other business entity is the surviving other business entity the laws of the jurisdiction under which the foreign other business entity is organized authorize the merger.

(4) In a merger in which a foreign other business entity is a disappearing other business entity it is not prohibited by the laws under which it is organized from effecting that merger.

(b) Each corporation and each other business entity which desires to merge shall approve an agreement of merger. The board of each corporation which desires to merge shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. The constituent corporations and constituent other business entities shall be parties to the agreement of merger and other persons, including a parent party corporation (Section 1200), may be parties to the agreement of merger. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each constituent corporation and constituent other business entity and the identity of the constituent corporation or constituent other business entity that is the surviving corporation or surviving other business entity.

(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be the same as or similar to the name of a disappearing domestic or foreign corporation, subject to subdivision (b) of Section 201.

(4) The manner of converting the shares of each of the constituent corporations into shares, interests or other securities of the surviving corporation or surviving other business entity and, if any shares of any of the constituent corporations are not to be converted solely into shares, interests or other securities of the surviving corporation or surviving other business entity, the cash, property, rights, interests or securities of any corporation or other business entity which the holders of those shares are to receive in exchange for the shares, which cash, property, rights, interests, or securities of any



corporation or other business entity may be in addition to or in lieu of shares, interests or other securities of the surviving corporation or surviving other business entity, or that the shares are canceled without consideration.

(5) Any other details or provisions as are required by the laws under which any constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2 or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

(c) Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a constituent corporation or its parent or a wholly owned subsidiary of either in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, property, rights, interests or securities. Notwithstanding paragraph (4) of subdivision (b), the nonredeemable common shares of a constituent corporation may be converted only into nonredeemable common shares of a surviving corporation or a parent party (Section 1200) if (1) a constituent corporation or a constituent other business entity or its parent owns, directly or indirectly, prior to the merger shares of another constituent corporation representing more than 50 percent of the voting power of the other constituent corporation or membership interests or limited partnership interests of another constituent other business entity representing more than 50 percent of the membership interests or limited partnership interests of the other constituent other business entity entitled to vote with respect to the merger or (2) a constituent corporation or constituent other business entity is a general partner of a constituent limited partnership, unless all of the shareholders of the class consent and except as provided in Section 407.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger or the certificate of merger, as is applicable, if the amendment is approved by the board of any constituent corporation and, if the amendment changes any of the principal terms of the agreement, by the outstanding shares (Section 152), if required by Chapter 12 (commencing with Section 1200), in the same manner as the original agreement of merger. If the agreement of merger so amended is approved by the board and the outstanding shares, if required, of each of the constituent corporations and is approved by each of the



constituent other business entities, the agreement of merger so amended shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent corporations and constituent other business entities without further approval by the outstanding shares (Section 152), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president and secretary or an assistant secretary acting on behalf of their respective corporations.

(g) (1) If the surviving entity is a corporation, after approval of a merger by the constituent corporations through approval by the board and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and the constituent other business entities, the surviving corporation shall file a copy of the agreement of merger with an officers' certificate of each constituent corporation attached stating the total number of outstanding shares of each class entitled to vote on the merger, that the principal terms of the agreement in the form attached were approved by that corporation by a vote of a number of shares of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, or that the merger agreement was entitled to be and was approved by the board alone under the provisions of Section 1201. In lieu of an officers' certificate for any constituent other business entities, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed. The certificate of merger shall be executed and acknowledged by each constituent other business entity by those persons required to execute the certificate of merger by the laws under which the other business entity is organized and, if applicable, on behalf of each constituent corporation by the chairperson of the board, president or a vice president and secretary or an assistant secretary of the respective corporation. The certificate of merger shall set forth, if a vote of the members or limited partners of a constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entities are organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. If equity securities of a parent party (Section 1200) of a constituent



corporation are to be issued in the merger, the officers' certificate of that constituent corporation shall state either that no vote of the shareholders of the parent was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall thereupon be effective, subject to subdivision (c) of Section 110 and subject to the provisions of subdivision (j), and the several parties thereto shall be one corporation. The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each corporation taxed under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code), the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is an other business entity, after approval of a merger by the constituent corporations through approval by the board and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and the constituent other business entities, the constituent corporations and constituent other business entities shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent corporation by the chairperson of the board, president or a vice president and secretary or an assistant secretary of the respective corporation and by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in the articles of organization or the operating agreement of the constituent limited liability company) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in the certificate of limited partnership of the domestic constituent limited partnership) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall set forth all of the following:

(A) The names and the Secretary of State's file numbers, if any, of each of the constituent corporations and constituent other business entities, separately identifying the disappearing corporations and



disappearing other business entities and the surviving other business entity.

(B) If the approval of the outstanding shares of a constituent corporation was required by Chapter 12 (commencing with Section 1200), a statement setting forth the total number of outstanding shares of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of shares of each class entitled to vote and the percentage vote required of each class.

(C) The future effective date or time, not more than 90 days subsequent to the date of filing of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(D) Any other information required to be stated in the certificate of merger by the laws under which each constituent other business entity is organized, including, if a domestic limited liability company is a party to a merger, subdivision (a) of Section 17552 and, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4.

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one entity. The certificate of merger shall not be filed, however, until there has been filed by or on behalf of each corporation taxed under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code), the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by the Bank and Corporation Tax Law have been paid or secured. The surviving other business entity shall keep a copy of the agreement of merger at the office referred to in Section 17057 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17552 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 15614 if a domestic limited partnership or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4 if a foreign limited partnership. Upon request of a holder of shares of a constituent corporation or a holder of interests of a constituent other business entity, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to the holder of shares of a constituent corporation or a holder of interests of a constituent other business entity, a copy of the agreement of merger. A waiver by a shareholder, partner, or member of the rights provided in the foregoing sentence shall be unenforceable. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger the





agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger in accordance with Section 1555 of the Insurance Code.

(h) (1) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving corporation or surviving other business entity and the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger.

(2) For all purposes for a merger in which the surviving entity is a domestic other business entity a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent corporations, either by themselves or together with constituent other business entities, into the surviving other business entity.

(i) (1) Upon a merger of corporations and other business entities pursuant to this section the separate existence of the disappearing corporations and disappearing other business entities cease and the surviving corporation or surviving other business entity shall succeed, without other transfer, to all the rights and property of each of the disappearing corporations and disappearing other business entities and shall be subject to all the debts and liabilities of each in the same manner as if the surviving corporation or surviving other business entity had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent corporations and constituent other business entities shall be preserved unimpaired, provided that those liens upon property of a disappearing corporation or disappearing other business entity shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing corporation or disappearing other business entity may be prosecuted to judgment, which shall bind the surviving corporation or surviving other business entity, or the surviving corporation or surviving other business entity may be proceeded against or substituted in its place.

(4) If a limited partnership is a party to the merger, nothing in this section is intended to affect the liability a general partner of a disappearing limited partnership may have in connection with the debts and liabilities of the disappearing limited partnership existing prior to the time the merger is effective.

(j) (1) The merger of any number of domestic corporations with any number of foreign corporations or foreign other business entities

in a merger in which one or more other business entities is a party shall comply with subdivision (a) and this subdivision.

(2) If the surviving corporation or surviving other business entity is a domestic corporation or domestic other business entity, the merger proceedings with respect to that corporation or other business entity and any domestic disappearing corporation shall conform to the provisions of this section, but if the surviving corporation or surviving other business entity is a foreign corporation or foreign other business entity, then, subject to the requirements of paragraph (4) of subdivision (c), and of Section 407 and Chapters 12 (commencing with Section 1200) and 13 (commencing with Section 1300) with respect to any domestic constituent corporations, Chapter 13 (commencing with Section 17600) of Title 2.5 with respect to any domestic constituent limited liability companies, and Article 7.6 (commencing with Section 15679.1) of Chapter 3 of Title 2 with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation or the laws of the state or place of organization of the surviving other business entity.

(3) If the surviving corporation or surviving other business entity is a domestic corporation or domestic other business entity, the certificate of merger, if the surviving entity is an other business entity, or the agreement of merger with attachments, if the surviving entity is a corporation, shall be filed as provided in subdivision (g) and thereupon, subject to subdivision (c) of Section 110 or paragraph (2) of subdivision (g), as is applicable, the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity.

(4) If the surviving corporation or surviving other business entity is a foreign corporation or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving corporation or surviving other business entity is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of paragraph (1) of subdivision (g). If one or more domestic other business entities is a disappearing other business entity in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger as required by subdivision (a) of Section 15678.4 or subdivision (a) of Section 17552, as is applicable, shall also be filed at the same time as the filing of the agreement of merger.



(5) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state.

(6) In a merger described in paragraph (3) or (4), each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to this subdivision surrender its right to transact intrastate business as of the date of filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger or certificate of merger, as is applicable, pursuant to this subdivision automatically has the effect of a cancellation of registration for that foreign other business entity without the necessity of the filing of a certificate of cancellation.

(7) A certificate of satisfaction of the Franchise Tax Board for each domestic disappearing corporation shall be filed when required by subdivision (g) or when required by Section 23334 of the Revenue and Taxation Code.

SEC. 3. Section 15642 of the Corporations Code is amended to read:

15642. A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(a) The general partner withdraws from the limited partnership as provided in Section 15662.

(b) The general partner is removed as a general partner.

(c) Unless otherwise provided in the partnership agreement, an order for relief against the general partner is entered under Chapter 7 of the federal bankruptcy law, or the general partner: (1) makes a general assignment for the benefit of creditors, (2) files a voluntary petition under the federal bankruptcy law, (3) files a petition or answer seeking for that partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, (4) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against that partner in any proceeding of this nature, or (5) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of that partner's properties.

(d) Unless otherwise provided in the partnership agreement, 60 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or

if within 60 days after the appointment without that partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of that partner's properties, the appointment is not vacated or stayed, or within 60 days after the expiration of any such stay, the appointment is not vacated.

(e) In the case of a general partner who is an individual, either of the following:

(1) The death of that partner.

(2) The entry by a court of competent jurisdiction of an order adjudicating the partner incompetent to manage the general partner's estate.

(f) Unless otherwise provided in the partnership agreement, in the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee, in which case the new trustee automatically becomes the new general partner).

(g) Unless otherwise provided in the partnership agreement, in the case of a general partner that is a separate partnership, the dissolution of the separate partnership.

(h) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation.

(i) In the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited partnership.

(j) In the case of a general partner that is a limited liability company, the filing of a certificate of dissolution or its equivalent for the limited liability company.

Notwithstanding the provisions of this section, a person who ceases to be a general partner of a limited partnership, shall be deemed to be acting as a general partner with respect to a third party doing business with the limited partnership, until an amended certificate of limited partnership is filed in accordance with Section 15622.

SEC. 4. Section 17001 of the Corporations Code is amended to read:

17001. Unless the context otherwise indicates, the following definitions govern the construction of this title:

(a) "Acknowledged" means that an instrument is either of the following:

(1) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Executed to include substantially the following wording preceding the signature: It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.



Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

(b) “Articles of organization” means articles of organization filed under Section 17050, including all amendments thereto or restatements thereof, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the foreign limited liability company is organized.

(c) “Bankrupt” or “bankruptcy” means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code, or any successor statute or other statute in any foreign jurisdiction having like import or effect.

(d) “Capital account” means, unless otherwise provided in the operating agreement, the amount of the capital interest of a member in the limited liability company consisting of that member’s original contribution, as (1) increased by any additional contributions and by that member’s share of the limited liability company’s profits and (2) decreased by any distribution to that member and by that member’s share of the limited liability company’s losses.

(e) “Constituent limited liability company” means a limited liability company that is merged with or into one or more other limited liability companies or other business entities and includes a surviving limited liability company.

(f) “Constituent other business entity” means any other business entity that is merged with or into one or more limited liability companies and includes a surviving other business entity.

(g) “Contribution” means any money, property, or services rendered, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted in this title, which a member contributes to a limited liability company as capital in that member’s capacity as a member pursuant to an agreement between the members, including an agreement as to value.

(h) “Disappearing limited liability company” means a constituent limited liability company that is not the surviving limited liability company.

(i) “Disappearing other business entity” means a constituent other business entity that is not the surviving other business entity.

(j) “Distribution” means the transfer of money or property by a limited liability company to its members without consideration.

(k) “Domestic” means organized under the laws of this state when used in relation to any limited liability company, other business entity or person (other than a natural person).

(l) “Domestic corporation” means a corporation as defined in Section 162.

(m) “Domestic limited partnership” means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(n) “Economic interest” means a person’s right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive distributions from, the limited liability company, but does not include any other rights of a member, including, without limitation, the right to vote or to participate in management, or, except as provided in Section 17106, any right to information concerning the business and affairs of the limited liability company.

(o) [RESERVED]

(p) “Foreign corporation” means a corporation formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(q) “Foreign limited liability company” means either (1) an entity formed under the limited liability company laws of any state other than this state, or (2) an entity organized under the laws of any foreign country that is (A) an unincorporated association, (B) organized under a statute pursuant to which an association may be formed that affords each of its members limited liability with respect to the liabilities of the entity, and (C) not an entity that is required to be registered or qualified pursuant to the provisions of Title 1 (commencing with Section 100) or Title 2 (commencing with Section 15001); but the term “foreign limited liability company” does not include a foreign association, as defined in Section 170.

(r) “Foreign limited partnership” means a partnership formed under the laws of any state other than this state or under the laws of a foreign country and having as partners one or more general partners and one or more limited partners or their equivalents under any name.

(s) “Foreign other business entity” means any other business entity formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(t) “Limited liability company” or “domestic limited liability company” means an entity having two or more members that is organized under this title, provided an entity may have only one member if the company is dissolving pursuant to Section 17350 or the one member is a trust in which at least two persons are treated as the owners of any portion of the trust pursuant to Section 17731 of the Revenue and Taxation Code.

(u) “Mail” unless otherwise provided in the operating agreement, means first-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail.

(v) “Majority in interest of the members,” unless otherwise provided in the operating agreement, means more than 50 percent of the interests of members in current profits of the limited liability company.



(w) “Manager” means a person elected by the members of a limited liability company to manage the limited liability company if the articles of organization contain the statement referred to in subdivision (b) of Section 17151 or, if the articles of organization do not contain that statement, “manager” means each of the members of the limited liability company.

(x) “Member” means a person who:

(1) Has been admitted to a limited liability company as a member in accordance with the articles of organization or operating agreement, or an assignee of an interest in a limited liability company who has become a member pursuant to Section 17303.

(2) Has not resigned, withdrawn, or been expelled as a member or, if other than an individual, been dissolved.

(y) “Member of record” means a member named as a member on the list maintained in accordance with paragraph (1) of subdivision (a) of Section 17058.

(z) “Membership interest” means a member’s rights in the limited liability company, collectively, including the member’s economic interest, any right to vote or participate in management, and any right to information concerning the business and affairs of the limited liability company provided by this title.

(aa) “Officer” means any person elected or appointed pursuant to Section 17154.

(ab) “Operating agreement” means any agreement, written or oral, between all of the members as to the affairs of a limited liability company and the conduct of its business in any manner not inconsistent with law or the articles of organization, including all amendments thereto, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the foreign limited liability company is organized. The term “operating agreement” may include, without more, an agreement between all the members to organize a limited liability company pursuant to the provisions of this title.

(ac) “Other business entity” means a corporation, limited partnership, general partnership, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a domestic limited liability company and a foreign limited liability company.

(ad) “Parent,” when used in relation to a specified limited liability company, means a person who owns, directly or indirectly, membership interests possessing more than 50 percent of the voting power of the specified limited liability company. When used in relation to a specified corporation or limited partnership, the term “parent” shall have the meanings set forth in Section 1200 and subdivision (v) of Section 15611, respectively.

(ae) “Person” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

(af) [RESERVED]

(ag) [RESERVED]

(ah) [RESERVED]

(ai) “Proxy,” unless otherwise provided in the operating agreement, means a written authorization signed or an electronic transmission authorized by a member or the member’s attorney-in-fact giving another person the power to exercise the voting rights of that member. “Signed,” for the purpose of this section, means the placing of the member’s name on the proxy (whether by manual signature, typewriting, telegraphic or electronic transmission, or otherwise) by the member or member’s attorney-in-fact.

A proxy may be transmitted by an oral telephonic transmission if it is submitted with information from which it may be determined that the proxy was authorized by the member, or by the member’s attorney-in-fact.

(aj) “Return of capital,” unless otherwise provided in the operating agreement, means any distribution to a member to the extent that the member’s capital account, immediately after the distribution, is less than the amount of that member’s contributions to the limited liability company as reduced by prior distributions that were a return of capital.

(ak) “State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(al) “Subsidiary of a specified limited liability company” means a limited liability company or other business entity in which shares, interests, or other securities possessing more than 50 percent of the voting power are owned by the specified limited liability company.

(am) “Surviving limited liability company” means a limited liability company into which one or more other limited liability companies or other business entities are merged.

(an) “Surviving other business entity” means an other business entity into which one or more limited liability companies are merged.

(ao) “Time a notice is given or sent,” unless otherwise expressly provided, means the time a written notice is deposited in the United States mails; is personally delivered to the recipient, is delivered to a common carrier for transmission, or is actually transmitted by the person giving the notice by electronic means, to the recipient; or the time any oral notice is communicated, in person or by telephone, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.





(ap) “Transact intrastate business” means to enter into repeated and successive transactions of business in this state, other than in interstate or foreign commerce.

(1) Without excluding other activities which may not be considered to be transacting intrastate business, a foreign limited liability company shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business, or merely because of its status as any one or more of the following:

(A) A shareholder of a domestic corporation.

(B) A shareholder of a foreign corporation transacting intrastate business.

(C) A limited partner of a foreign limited partnership transacting intrastate business.

(D) A limited partner of a domestic limited partnership.

(E) A member or manager of a foreign limited liability company transacting intrastate business.

(F) A member or manager of a domestic limited liability company.

(2) Without excluding other activities which may not be considered to be transacting intrastate business, a foreign limited liability company shall not be considered to be transacting intrastate business within the meaning of this subdivision solely by reason of carrying on in this state any one or more of the following activities:

(A) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(B) Holding meetings of its managers or members or carrying on any other activities concerning its internal affairs.

(C) Maintaining bank accounts.

(D) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company’s securities or maintaining trustees or depositaries with respect to those securities.

(E) Effecting sales through independent contractors.

(F) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance without this state before becoming binding contracts.

(G) Creating or acquiring evidences of debt or mortgages, liens, or security interests in real or personal property.

(H) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(I) Conducting an isolated transaction that is completed within 180 days and not in the course of a number of repeated transactions of a like nature.

(3) A person shall not be deemed to be transacting intrastate business in this state merely because of its status as a member or manager of a domestic limited liability company or a foreign limited

liability company registered to transact intrastate business in this state.

(aq) “Vote” includes authorization by written consent.

(ar) “Voting power” means the power to vote on any matter at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event which has not yet occurred.

(as) “Withdrawal” includes the resignation or retirement of a member as a member.

(at) “Written” or “in writing” includes facsimile and telegraphic communication.

SEC. 5. Section 17005 of the Corporations Code is amended to read:

17005. (a) Except as provided in subdivisions (b) and (c), relations among members and between the members and the limited liability company are governed by the articles of organization and operating agreement. To the extent the articles of organization or operating agreement do not otherwise provide, this title governs relations among the members and between the members and the limited liability company.

(b) The effect of the provisions of this title may be varied as among the members or as between the members and the limited liability company by the articles of organization or operating agreement, provided, however, that the provisions of Sections 17059, 17103, 17104, 17152, 17154, and 17155 may only be varied by the articles of organization or a written operating agreement. Notwithstanding the first sentence of this subdivision, neither the articles of organization nor the operating agreement may:

(1) Vary the definitions in Section 17001, except as specifically provided therein.

(2) Eliminate the right of a member pursuant to subdivision (c) of Section 17100 to assert that a provision in the operating agreement governing the termination of that member’s interest and the return of that member’s contribution was unreasonable under the circumstances existing at the time the agreement was made.

(3) Vary the voting requirements or voting rights set forth in subdivisions (b) and (c) of Section 17103.

(4) Vary a member’s rights under Sections 17106 and 17453.

(c) The provisions of Chapter 2 (commencing with Section 17050), Chapter 8 (commencing with Section 17350), Chapter 10 (commencing with Section 17450), Chapter 11 (commencing with Section 17500), Chapter 12 (commencing with Section 17550), and Chapter 13 (commencing with Section 17600) may be varied by the articles of organization or by a written operating agreement only to the extent expressly provided in those chapters.

(d) The fiduciary duties of a manager to the limited liability company and to the members of the limited liability company may

only be modified in a written operating agreement with the informed consent of the members.

(e) The presence in certain provisions of this title of the words “unless otherwise provided in the articles of organization or operating agreement” or words of similar import does not imply that the effect of other provisions may not be varied as among the members by the articles of organization or operating agreement.

(f) If any provision of the articles of organization conflicts with one or more provisions of a written operating agreement, the articles of organization shall control.

SEC. 6. Section 17051 of the Corporations Code is amended to read:

17051. (a) The articles of organization shall set forth:

(1) The name of the limited liability company.

(2) The latest date on which the limited liability company is to dissolve.

(3) The following statement:

The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the Beverly-Killea Limited Liability Company Act.

(4) [RESERVED]

(5) The name and address of the initial agent for service of process on the limited liability company who meets the qualifications specified in paragraph (1) of subdivision (b) of Section 17061, unless a corporate agent is designated, in which case only the name of the agent shall be set forth.

(6) If the limited liability company is to be managed by one or more managers and not by all its members, the statement referred to in subdivision (b) of Section 17151. If the limited liability company is to be managed by only one manager, the articles of organization shall contain a statement to that effect.

(b) It is not necessary to set out in the articles of organization any of the powers of a limited liability company enumerated in this title.

(c) The articles of organization may contain any other provision not inconsistent with law, including, but not limited to:

(1) A provision limiting or restricting the business in which the limited liability company may engage or the powers that the limited liability company may exercise or both.

(2) Provisions governing the admission of members to the limited liability company.

(3) Any events, other than or additional to the events specified in subdivision (d) of Section 17350, that will cause a dissolution of the limited liability company.

(4) A statement of whether there are limitations on the authority of managers or members to bind the limited liability company, and, if so, what the limitations are.

(5) The names of the managers of the limited liability company.

(d) No limitation upon the business, purposes, or powers of the limited liability company contained in or implied by the articles of organization or the operating agreement may be asserted by any person, except in one of the following types of proceedings:

(1) In a proceeding by a member or the state to enjoin the doing of unauthorized business by the limited liability company or its managers or officers, if third parties have not acquired rights thereby.

(2) In a proceeding to dissolve the limited liability company.

(3) In a derivative proceeding by the limited liability company or by a member suing on the company's behalf against the officers or managers of the limited liability company for violation of their authority. However, the limitation may not be asserted if the person asserting the limitation had actual knowledge of the limitation at the time of the act or event complained of.

(e) The Secretary of State may cancel the filing of articles of organization if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of this section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall be effective at that time. The second notice shall be given 20 days or more after the first notice and 90 days or less after the original filing.

SEC. 7. Section 17052 of the Corporations Code is amended to read:

17052. The name of each limited liability company as set forth in its articles of organization:

(a) Shall contain either the words "limited liability company" or the abbreviation "LLC" or "L.L.C." as the last words in the name of the limited liability company. The words "limited" and "company" may be abbreviated to "Ltd." and "Co.," respectively.

(b) May contain the name of one or more members.

(c) Shall not be a name that the Secretary of State determines is likely to mislead the public and shall not be the same as, or resemble so closely as to tend to deceive, (1) the name of any limited liability company that has filed articles of organization pursuant to Section 17050, (2) the name of any foreign limited liability company registered to do business in this state pursuant to Section 17451, or (3) any name that is under reservation for another domestic limited liability company or foreign limited liability company pursuant to Section 17053. However, a limited liability company may adopt a name that is substantially the same as that of an existing domestic limited liability company or foreign limited liability company that is registered pursuant to Section 17451 upon proof of consent by that



domestic limited liability company or foreign limited liability company and a finding by the Secretary of State that, under the circumstances, the public is not likely to be misled.

(d) Shall not contain the words “bank,” “insurance,” “trust,” “trustee,” “incorporated,” “inc.,” “corporation,” or “corp.”

(e) The use by a limited liability company or a foreign limited liability company of a name in violation of this section may be enjoined, notwithstanding the filing of its articles of organization or its registration with the Secretary of State.

(f) A limited liability company may record in the office of the county recorder of any county in this state, and county recorders, on request, shall record a certified copy of the limited liability company articles of organization and any exhibits or attachments, or any amendment or correction thereto, that has been filed in the office of the Secretary of State. A foreign limited liability company may record in the office of the county recorder of any county in the state a certified copy of the limited liability company application for registration, certificate of registration, or any amendment thereto, that has been filed in the office of the Secretary of State. The recording shall create a conclusive presumption in favor of any bona fide purchaser or encumbrancer for value of the limited liability company real property located in the county in which the certified copy has been recorded, of the statements contained therein.

SEC. 8. Section 17054 of the Corporations Code is amended to read:

17054. (a) Subject to subdivision (b) of Section 17103, the articles of organization may be amended at any time and in any manner as the members may determine, as long as the articles of organization as amended contain only those provisions as it would be lawful to insert in original articles of organization filed at the time of the filing of the amendment. The articles of organization may be amended regardless of whether any provision contained in the amendment was permissible at the time of the original organization of the limited liability company.

(b) The articles of organization shall be amended by filing a certificate of amendment thereto duly executed by at least one manager, unless a greater number is provided in the articles of organization. The certificate of amendment shall be filed with, and on a form prescribed by, the Secretary of State, and shall set forth all of the following:

(1) The name and the Secretary of State’s file number of the limited liability company.

(2) The text of the amendment to the articles of organization.

(c) A certificate of amendment to the articles of organization shall be filed to effect any of the following:

(1) A change in the name of the limited liability company.

(2) Any change in the statement referred to in subdivision (b) of Section 17151.

(3) Any change in the time as stated in the articles of organization for the dissolution of the limited liability company.

(4) Any change in the events that will cause a dissolution of the limited liability company.

(d) The managers shall cause to be filed a certificate of amendment to the articles of organization within 30 days of the discovery by any of the managers of any false or erroneous material statement contained in the articles of organization or any amendment thereto.

(e) Any manager who executes a certificate of amendment shall be liable for any statement materially inconsistent with the operating agreement or any material misstatement of fact contained in the certificate of amendment if the manager knew or should have known that the statement was false when made or that the statement became false and an amendment required by subdivision (d) was not filed, and the person suffering the loss relied on the statement or misstatement.

(f) Articles of organization may be restated at any time. Restated articles of organization shall be filed with, and on a form prescribed by, the Secretary of State, shall be specifically designated as restated in the heading, shall set forth the limited liability company's name and the Secretary of State's file number, may set forth the name and address of the agent for service of process required to be maintained by Section 17057, unless a corporate agent is designated, in which case only the name of the agent shall be set forth, shall set forth all the other matters required by Section 17051 to be set forth in the articles of organization, and may set forth any other matters that may be set forth as authorized by Section 17051. If restated articles of organization include the agent for service of process, any previously filed statements pursuant to Section 17060 are superseded as to the agent for service of process until another statement pursuant to Section 17060 is filed subsequent to the filing of the restated articles of organization. If the name of the limited liability company is to be changed by the filing of the restated articles of organization, the old name shall also be set forth in the heading in a manner to indicate the intent to change the name.

SEC. 9. Section 17061 of the Corporations Code is amended to read:

17061. (a) In addition to Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, process may be served upon limited liability companies and foreign limited liability companies as provided in this section.

(b) Personal service of a copy of any process against the limited liability company or the foreign limited liability company by delivery (1) to any individual designated by it as agent, or (2) if the designated

agent is a corporation, to any person named in the latest certificate of the corporate agent filed pursuant to Section 1505 at the office of the corporate agent, shall constitute valid service on the limited liability company or the foreign limited liability company. No change in the address of the agent for service of process or appointment of a new agent for service of process shall be effective until an amendment to the statement described in Section 17060 is filed. In the case of a foreign limited liability company that has appointed the Secretary of State as agent for service of process by reason of subdivision (d) of Section 17456, process shall be delivered by hand to the Secretary of State, or to any person employed in the capacity of assistant or deputy, and shall include one copy of the process for each defendant to be served, together with a copy of the court order authorizing the service and the fee therefor. The order shall set forth the address to which the process shall be sent by the Secretary of State.

(c) (1) If an agent for service of process has resigned and has not been replaced or if the designated agent cannot with reasonable diligence be found at the address designated for personal delivery of the process, and it is shown by affidavit to the satisfaction of the court that process against a limited liability company or foreign limited liability company cannot be served with reasonable diligence upon the designated agent by hand in the manner provided in Section 415.10, subdivision (a) of Section 415.20, or subdivision (a) of Section 415.30 of the Code of Civil Procedure, the court may make an order that the service shall be made upon a domestic limited liability company or upon a registered foreign limited liability company by delivering by hand to the Secretary of State, or to any person employed in the Secretary of State's office in the capacity of assistant or deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing the service. Service in this manner shall be deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the copy of process and the fee therefor, the Secretary of State shall give notice of the service of the process to the limited liability company or foreign limited liability company, at its principal executive office, by forwarding to that office, by registered mail with request for return receipt, the copy of the process.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State under this title and shall record therein the time of service and the action taken by the Secretary of State. A certificate under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice to the limited liability company or foreign limited liability company, and the forwarding of the process pursuant to this section, shall be competent and prima facie evidence of the service of process.



(d) (1) The articles of organization of a limited liability company and the application for registration of a foreign limited liability company shall designate, as the agent for service of process, an individual residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If an individual is designated, the statement shall set forth that person's complete business or residence address in this state.

(2) An agent designated for service of process may file with the Secretary of State a signed and acknowledged written statement of resignation as an agent. Upon filing of the statement of resignation, the authority of the agent to act in that capacity shall cease and the Secretary of State shall give written notice of the filing of the statement of resignation by mail to the limited liability company or foreign limited liability company addressed to its principal executive office.

(3) If an individual who has been designated agent for service of process dies or resigns or no longer resides in the state, or if the corporate agent for that purpose resigns, dissolves, withdraws from the state, forfeits its right to transact intrastate business, has its corporate rights, powers, and privileges suspended, or ceases to exist, the limited liability company or foreign limited liability company shall promptly file an initial or amended statement described in Section 17060 designating a new agent.

(e) In addition to any other discovery rights that may exist, in any case pending in a California court in which a party seeks records from a limited liability company formed under this title, whether or not the limited liability company is a party, the court may order the production in California of the books and records of the limited liability company on those terms and conditions that the court deems appropriate.

(f) A member may, in a written operating agreement or other writing, consent to be subject to the nonexclusive jurisdiction of the courts of a specified jurisdiction, or the exclusive jurisdiction of the courts of this state.

(g) If a member desires to use the arbitration process, that member may, in a written operating agreement or other writing, consent to be nonexclusively subject to arbitration in a specified state, or to be exclusively subject to arbitration in this state.

(h) Along with the consent to the jurisdiction of courts or to be subject to arbitration as provided in subdivisions (f) and (g), a member may consent to be served with legal process in the manner prescribed in a written operating agreement or other writing.

SEC. 10. Section 17100 of the Corporations Code is amended to read:

17100. (a) After formation of a limited liability company, a person may become a member:





(1) In the case of a person acquiring a membership interest directly from the limited liability company, at the time provided in and upon compliance with the articles of organization or the operating agreement or, if the articles of organization or operating agreement do not so provide, only upon the vote of a majority in interest of the members, excluding the vote of the person acquiring the membership interest, and only when the person becomes a party to the operating agreement.

(2) In the case of an assignee of a membership interest, upon compliance with subdivision (a) of Section 17303 and at the time provided in and upon compliance with the articles of organization or the operating agreement or, if the articles of organization or operating agreement do not so provide, when the assignee becomes a party to the operating agreement.

(b) In each case under subdivision (a), the person acquiring the membership interest shall be added as a member to the list required by paragraph (1) of subdivision (a) of Section 17058.

(c) The operating agreement may provide for the termination in whole or in part of the membership interest or economic interest of a member in the limited liability company. If a member's economic interest in the limited liability company is terminated pursuant to the operating agreement, the member may demand and shall be entitled to receive a return of that member's contribution. Any provision in an operating agreement governing the termination of a member's interest and the return of a member's contribution shall be enforceable in accordance with its terms unless the member seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the agreement was made. Upon any termination of a membership interest, the list required by paragraph (1) of subdivision (a) of Section 17058 shall be amended accordingly.

(d) Sections 406 and 407 of the Labor Code shall not apply to membership interests issued by any foreign or domestic limited liability company to the following persons:

(1) Any employee of the limited liability company or of any parent or subsidiary thereof, pursuant to a membership interest purchase plan or agreement or membership interest option plan or agreement.

(2) In any transaction in connection with securing employment, to a person, who is or is about to become an officer of the limited liability company or a manager (as appointed or elected by the members) of the limited liability company, or of any parent or subsidiary thereof.

SEC. 11. Section 17101 of the Corporations Code is amended to read:

17101. (a) Except as otherwise provided in Section 17254 or in subdivision (e), no member of a limited liability company shall be personally liable under any judgment of a court, or in any other



manner, for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a member of the limited liability company.

(b) A member of a limited liability company shall be personally liable under a judgment of a court or for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation, or liability of the corporation; except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that the members have personal liability for any debt, obligation, or liability of the limited liability company where the articles of organization or operating agreement do not expressly require the holding of meetings of members or managers.

(c) Nothing in this section shall be construed to affect the liability of a member of a limited liability company (1) to third parties for the member's participation in tortious conduct, or (2) pursuant to the terms of a written guarantee or other contractual obligation entered into by the member, other than an operating agreement.

(d) A limited liability company or foreign limited liability company shall carry insurance or provide an undertaking to the same extent and in the same amount as is required by any law, rule, or regulation of this state that would be applicable to the limited liability company or foreign limited liability company were it a corporation organized and existing or duly qualified for the transaction of intrastate business under the General Corporation Law.

(e) Notwithstanding subdivision (a), a member of a limited liability company may agree to be obligated personally for any or all of the debts, obligations, and liabilities of the limited liability company as long as the agreement to be so obligated is set forth in the articles of organization or in a written operating agreement that specifically references this subdivision.

SEC. 12. Section 17103 of the Corporations Code is amended to read:

17103. (a) The articles of organization or a written operating agreement may provide to all or certain identified members or a specified class or group of members the right to vote separately or with all or any class or group of members on any matter. Voting by members may be on a per capita, number, financial interest, class, group, or any other basis. If no voting provision is contained in the articles of organization or written operating agreement:

(1) The members of a limited liability company shall vote in proportion to their interests in current profits of the limited liability



company or, in the case of a member who has assigned his or her or its entire economic interest in the limited liability company to a person who has not been admitted as a member, in proportion to the interest in current profits that the assigning member would have, had the assignment not been made.

(2) Any amendment of the articles of organization or operating agreement shall require the unanimous vote of all members.

(3) In all other matters in which a vote is required, a vote of a majority in interest of the members shall be sufficient.

(b) Notwithstanding any provision to the contrary in the articles of organization or operating agreement, in no event shall the articles of organization be amended by a vote of less than a majority in interest of the members.

(c) Notwithstanding any provision to the contrary in the articles of organization or operating agreement, members shall have the right to vote on a dissolution of the limited liability company as provided in subdivision (c) of Section 17350 and on a merger of the limited liability company as provided in Section 17551.

SEC. 13. Section 17154 of the Corporations Code is amended to read:

17154. (a) A written operating agreement may provide for the appointment of officers, including, without limitation, a chairperson or a president, or both, a secretary, a chief financial officer, and any other officers with such titles, powers, and duties as shall be specified in the articles of organization or operating agreement, or determined by the managers or members. An officer may, but need not, be a member or manager of the limited liability company, and any number of offices may be held by the same person.

(b) Officers, if any, shall be appointed in accordance with the written operating agreement or, if no such provision is made in the operating agreement, any officers shall be appointed by the managers and shall serve at the pleasure of the managers, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the limited liability company without prejudice to the rights, if any, of the limited liability company under any contract to which the officer is a party.

(c) Subject to the provisions of subdivision (d) of Section 17051, any note, mortgage, evidence of indebtedness, contract, certificate, statement, conveyance, or other instrument in writing, and any assignment or endorsement thereof, executed or entered into between any limited liability company and any other person, when signed by the chairperson of the board, the president or any vice president and any secretary, any assistant secretary, the chief financial officer, or any assistant treasurer of the limited liability company, is not invalidated as to the limited liability company by any lack of authority of the signing officers in the absence of actual

knowledge on the part of the other person that the signing officers had no authority to execute the same.

SEC. 14. Section 17158 of the Corporations Code is amended to read:

17158. (a) No person who is a manager or officer or both a manager and officer of a limited liability company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a manager or officer or both a manager and officer of the limited liability company.

(b) Notwithstanding subdivision (a), a manager of a limited liability company may agree to be obligated personally for any or all of the debts, obligations, and liabilities of the limited liability company as follows:

(1) If the agreement to be so liable is set forth in the articles of organization or in a written operating agreement that specifically references this subdivision.

(2) Pursuant to the terms of a written guarantee or other contractual obligation entered into by the manager, other than an operating agreement.

SEC. 15. Section 17201 of the Corporations Code is amended to read:

17201. (a) (1) Subject to the terms of the articles of organization or the operating agreement, a member is not excused from an obligation to the limited liability company to perform any promise to contribute cash or property or to perform services because of death, disability, dissolution, or any other reason.

(2) If a member does not make the required contribution of property or services, that member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of the fair market value (or agreed value if stated in writing and signed by the limited liability company and the member) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against the member under the articles of organization, operating agreement, or applicable law.

(3) An operating agreement may provide that the interest of a member who fails to make any contribution or other payment that the member is required to make will be subject to specific remedies for, or specific consequences of, the failure. A provision shall be enforceable in accordance with its terms unless the member seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the agreement was made. The specific remedies or consequences may include loss of voting, approval, or other rights, loss of the member's



ability to actively participate in the management and operations of the limited liability company, liquidated damages, or a reduction of the defaulting member's economic rights. The reduction of the defaulting member's economic rights may include one or more of the following provisions:

(A) Diluting, reducing, or eliminating the defaulting member's proportionate interest in the limited liability company.

(B) Subordinating the defaulting member's interest in the limited liability company to that of nondefaulting members.

(C) Permitting a forced sale of the membership interest.

(D) Permitting the lending or contribution by other members of the amount necessary to meet the defaulting member's commitment.

(E) Adjusting the interest rates or other rates of return, preferred, priority, or otherwise, with respect to contributions by or capital accounts of the other members.

(F) Fixing the value of the defaulting member's interest in the limited liability company by appraisal, formula and redemption, or sale of the defaulting member's interest in the limited liability company at a percentage of that value.

(b) (1) Unless otherwise provided in the articles of organization or the operating agreement, the obligation of a member to make a contribution or return money or property paid or distributed in violation of this section may be compromised only by the unanimous vote of the members.

(2) Notwithstanding the compromise of an obligation referred to in paragraph (1), a person whose claim against a limited liability company arises before the receipt of notice of the compromise may enforce the original obligation of a member to make a contribution to the limited liability company or to return a distribution if the person had knowledge of the original obligation prior to the time the claim arose and if the compromise occurred after the time the claim arose. Any other person with a claim against a limited liability company may enforce only the existing obligation of a member to make a contribution to the limited liability company or to return to the limited liability company money or other property paid or distributed.

(c) A person with a claim against a limited liability company may not enforce a conditional obligation of a member unless the conditions have been satisfied or waived. Conditional obligations include, without limitation, a capital contribution payable upon a discretionary call of the limited liability company prior to the time the call occurs.

(d) Nothing in this section shall be construed to affect the rights of third-party creditors of the limited liability company to seek equitable remedies nor any rights existing under the Uniform

Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

SEC. 16. Section 17250 of the Corporations Code is amended to read:

17250. Distributions of the money or property of a limited liability company shall be made to the members and to any classes of members in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, distributions that are a return of capital shall be made in proportion to the contributions made by each member and distributions that are not a return of capital shall be made in proportion to the allocation of profits.

Subject to Sections 17254 and 17353, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to the sharing of profits and distributions from a limited liability company.

SEC. 17. Section 17251 of the Corporations Code is amended to read:

17251. Except as provided in this chapter, a member is entitled to receive distributions from a limited liability company before the withdrawal of that member from the company and before the dissolution and winding up of the company, subject to the limitations contained in Section 17254, to the extent and at the times or upon the happening of the events specified in the operating agreement.

SEC. 18. Section 17252 of the Corporations Code is amended to read:

17252. (a) The articles of organization or a written operating agreement may provide that a member may withdraw, resign, or retire from a limited liability company at the time or upon the happening of events specified in the operating agreement or that the member shall not have the right to withdraw, resign, or retire as a member of a limited liability company. Notwithstanding any restriction upon the right of a member to withdraw, resign, or retire, a member may withdraw from a limited liability company at any time by giving written notice to the other members. However, unless the articles of organization or written operating agreement provide otherwise, the withdrawn member shall not be entitled to payment for the member's interest in the limited liability company, and, beginning on the date of the withdrawal, the withdrawn member shall have only the right of a holder of an economic interest with respect to that withdrawn member's interest in the limited liability company, and then only with respect to distributions, if any, to which a holder of an economic interest is entitled under the operating agreement of the limited liability company, and the withdrawn



member shall no longer be a member of the limited liability company. If the withdrawal, resignation, or retirement is in violation of the operating agreement, the limited liability company shall have the right to offset any damages for the breach of the operating agreement from the amounts, if any, otherwise distributable to the withdrawn member with respect to the withdrawn member's economic interest in the limited liability company.

(b) Upon the withdrawal of a member, the list required to be kept pursuant to paragraph (1) of subdivision (a) of Section 17058 shall be amended accordingly.

SEC. 19. Section 17254 of the Corporations Code is amended to read:

17254. (a) No distribution shall be made if, after giving effect to the distribution, either of the following occurs:

(1) The limited liability company would not be able to pay its debts as they become due in the usual course of business.

(2) The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member receiving the distribution.

(b) The limited liability company may base a determination that a distribution is not prohibited under subdivision (a) on any of the following:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances.

(2) A fair valuation.

(3) Any other method that is reasonable in the circumstances.

(c) Except as provided in subdivision (e), the effect of a distribution under subdivision (a) is measured as of (1) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or (2) the date payment is made if it occurs more than 120 days after the date of authorization.

(d) (1) If terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subdivision (b).

(2) If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(e) A member or assignee of a member is obligated to return a distribution from a limited liability company to the extent that (1)

the member or assignee had actual knowledge of facts indicating the impropriety of the distribution, and (2) immediately after giving effect to the distribution, and notwithstanding the compromise of an obligation referred to in subdivision (b) of Section 17201, all liabilities of the limited liability company, other than liabilities to members or assignees on account of their interest in the limited liability company and liabilities as to which recourse of creditors is limited to specified property of the limited liability company, exceed the fair market value of the limited liability company's assets, provided that the fair market value of any property that is subject to a liability as to which recourse of creditors is so limited shall be included in the limited liability company assets only to the extent that the fair market value of the property exceeds this liability.

(f) A cause of action with respect to an obligation to return a distribution pursuant to subdivision (e) is extinguished unless the action is brought within four years after the distribution is made.

SEC. 20. Section 17301 of the Corporations Code is amended to read:

17301. (a) Except as provided in the articles of organization or the operating agreement:

(1) A membership interest or an economic interest is assignable in whole or in part, provided, however, that no membership interest may be assigned without the consent of a majority in interest of the members not transferring their interests, as required pursuant to Section 17303.

(2) An assignment of an economic interest does not of itself dissolve the limited liability company or, other than as set forth in the articles of organization or operating agreement, entitle the assignee to vote or participate in the management and affairs of the limited liability company or to become or exercise any rights of a member.

(3) An assignment of an economic interest merely entitles the assignee to receive, to the extent assigned, the distributions and the allocations of income, gains, losses, deductions, credit, or similar items to which the assignor would be entitled.

(4) Upon the assignment of all or part of an economic interest, the assignor shall provide the manager or member of the limited liability company responsible for maintaining its books and records with the name and address of the assignee, together with details of the interest assigned. Upon receipt of that notice, the limited liability company shall amend the list required by paragraph (1) of subdivision (a) of Section 17058 accordingly. Until the assignee of that interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights and powers of a member, including the right to vote which, in the case of a member who has assigned his or her or its entire economic interest in the limited liability company, shall include the right to vote in proportion to the interest in current





profits that the assigning member would have, had the assignment not been made.

(b) Except to the extent assumed by agreement, until an assignee of an economic interest in a limited liability company becomes a member, the assignee shall have no liability to the limited liability company under Chapter 5 (commencing with Section 17200) and Chapter 6 (commencing with Section 17250) solely as a result of the assignment. The assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

(c) The pledge of, or granting of, a security interest, lien, or other encumbrance in or against any or all of the membership interest of a member shall not cause the member to cease to be a member or to grant to anyone else the power to exercise any rights or powers of a member.

SEC. 21. Section 17303 of the Corporations Code is amended to read:

17303. (a) Except as otherwise provided in the articles of organization or the operating agreement, an assignee of an interest in a limited liability company may become a member only if a majority in interest of the other members vote in favor of the assignee's admission to the limited liability company as a member.

(b) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreement, and this title. An assignee who becomes a member also is liable for the obligations of the assignor to make contributions as provided in Chapter 5 (commencing with Section 17200), and to return any unlawful distributions made to the assignee under Chapter 6 (commencing with Section 17250) or Chapter 8 (commencing with Section 17350). However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a member and that could not be ascertained from the articles of organization or operating agreement.

(c) Whether or not an assignee of a membership interest becomes a member, the assignor is not released from the assignor's liability to the limited liability company under Chapter 5 (commencing with Section 17200) and Chapter 6 (commencing with Section 17250).

SEC. 22. Section 17350 of the Corporations Code is amended to read:

17350. A limited liability company shall be dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(a) At the time specified in the articles of organization.

(b) Upon the happening of events specified in the articles of organization or a written operating agreement.

(c) By the vote of a majority in interest of the members, or a greater percentage of the voting interests of members as may be



specified in the articles of organization or a written operating agreement.

(d) Except as otherwise provided in the articles of organization or a written operating agreement, upon the death, bankruptcy, retirement, resignation, expulsion, or dissolution of any member who is a manager (in the case of a limited liability company managed by one or more managers who are members), or any member (in the case of a limited liability company managed by its members or by one or more managers who are not members), unless, in either case, the business of the limited liability company is continued by a vote of a majority in interest of the remaining members within 90 days of the happening of the event. Notwithstanding anything to the contrary in subdivision (v) of Section 17001 or 17103, the term “majority in interest of the remaining members” as used in this subdivision shall mean a majority of the profits interests of all of the remaining members and also a majority of the capital interests owned by all the remaining members.

(e) Entry of a decree of judicial dissolution pursuant to Section 17351.

SEC. 23. Section 17352 of the Corporations Code is amended to read:

17352. In the event of a dissolution of a limited liability company:

(a) The managers who have not wrongfully dissolved the limited liability company or, if none, the members may wind up the limited liability company’s affairs, unless the dissolution occurs pursuant to subdivision (e) of Section 17350, in which event the winding up shall be conducted in accordance with the decree of dissolution. The persons winding up the affairs of the limited liability company shall give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the records of the limited liability company.

(b) Upon the petition of any manager or of any member or members, or three or more creditors, a court of competent jurisdiction may enter a decree ordering the winding up of the limited liability company if that appears necessary for the protection of any parties in interest. The decree shall designate the managers or members who are to wind up the limited liability company’s affairs.

(c) Except as otherwise provided in the articles of organization or a written operating agreement, the managers or members winding up the affairs of the limited liability company pursuant to this section shall be entitled to reasonable compensation.

SEC. 24. Section 17356 of the Corporations Code is amended to read:

17356. (a) (1) The managers shall cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of dissolution upon the dissolution of the limited liability company pursuant to Chapter 8 (commencing with Section 17350), unless the



event causing the dissolution is that specified in subdivision (e) of Section 17350, in which case the managers or members conducting the winding up of the limited liability company's affairs pursuant to Section 17352 shall have the obligation to file the certificate of dissolution.

(2) The certificate of dissolution shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of State's file number.

(B) Any other information the managers or members filing the certificate of dissolution determine to include.

(3) If a dissolution pursuant to subdivision (c) of Section 17350 is made by the vote of all of the members and a statement to that effect is added to the certificate of cancellation of articles of organization pursuant to subdivision (b), the separate filing of a certificate of dissolution pursuant to this subdivision is not required.

(b) (1) The managers or members who filed the certificate of dissolution shall cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of cancellation of articles of organization upon the completion of the winding up of the affairs of the limited liability company pursuant to Chapter 8 (commencing with Section 17350), unless the event causing the dissolution is that specified in subdivision (e) of Section 17350, in which case the managers or members conducting the winding up of the limited liability company's affairs pursuant to Section 17352 shall have the obligation to file the certificate of cancellation of articles of organization.

(2) The certificate of cancellation of articles of organization shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of State's file number.

(B) A statement that a person, limited liability company, or other business entity assumes the tax liability, if any, of the dissolving limited liability company as security for the issuance of a tax clearance certificate from the Franchise Tax Board and is responsible for additional taxes or fees, if any, that are assessed under the Revenue and Taxation Code and become due after the date of the assumption of tax liability.

(C) Any other information the managers or members filing the certificate of cancellation of articles of organization determine to include.

(3) The Secretary of State shall notify the Franchise Tax Board of the filing and shall forward to the Franchise Tax Board any statement of assumption of tax liability accompanying the certificate of cancellation. The Franchise Tax Board shall determine from the available evidence whether or not all taxes and fees imposed on the limited liability company under the Revenue and Taxation Code have been paid or secured and shall notify the taxpayer of any



outstanding tax or fee liability and the necessity of satisfying that liability.

(4) The Franchise Tax Board shall notify the Secretary of State when all taxes and fees imposed on the limited liability company under the Revenue and Taxation Code have been paid or secured, at which time the limited liability company shall cease to exist as of the date of filing its certificate of cancellation of articles of organization.

(5) When a limited liability company files a certificate of cancellation of articles of organization, the Secretary of State shall notify the limited liability company that the limited liability company will be dissolved as of the date of filing only if the Franchise Tax Board notifies the Secretary of State that all taxes and fees imposed on the limited liability company pursuant to Chapter 1.6 of Part II (commencing with Section 23091) of Division 2 of the Revenue and Taxation Code have been paid or secured.

SEC. 25. Section 17450 of the Corporations Code is amended to read:

17450. Subject to the provisions of Section 17453:

(a) The laws of the state or foreign country under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability and authority of its managers and members.

(b) A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

SEC. 26. Section 3351 of the Labor Code is amended to read:

3351. "Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

(a) Aliens and minors.

(b) All elected and appointed paid public officers.

(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay; provided that, where the officers and directors of the private corporation are the sole shareholders thereof, the corporation and the officers and directors shall come under the compensation provisions of this division only by election as provided in subdivision (a) of Section 4151.

(d) Except as provided in subdivision (h) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.



(e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.

(f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability company; provided that where the working members of the partnership or limited liability company are general partners or managers, the partnership or limited liability company and the partners or managers shall come under the compensation provisions of this division only by election as provided in subdivision (a) of Section 4151. If a private corporation is a general partner or manager, “working members of a partnership or limited liability company” shall include the corporation and the officers and directors of the corporation, provided that the officers and directors are the sole shareholders of the corporation. If a limited liability company is a partner or member, “working members of the partnership or limited liability company” shall include the managers of the limited liability company.

(g) For the purposes of subdivisions (c) and (f), the persons holding the power to revoke a trust as to shares of a private corporation or as to general partnership or limited liability company interests held in the trust, shall be deemed to be the shareholders of the private corporation, or the general partners of the partnership, or the managers of the limited liability company.

SEC. 27. Section 18633.5 of the Revenue and Taxation Code is amended to read:

18633.5. (a) Every limited liability company which is classified as a partnership for California tax purposes that is doing business in this state, organized in this state, or registered with the Secretary of State shall file its return within three months and 15 days after the close of its taxable or income year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). The return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under the penalties of perjury, signed by one of the limited liability company members.

(b) Each limited liability company required to file a return under subdivision (a) for any limited liability company taxable or income year shall, on or before the day on which the return for that taxable or income year was required to be filed, furnish to each person who holds an interest in that limited liability company at any time during



that taxable year a copy of that information required to be shown on that return as may be required by forms and instructions prescribed by the Franchise Tax Board.

(c) Any person who holds an interest in a limited liability company as a nominee for another person shall do both of the following:

(1) Furnish to the limited liability company, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that person, and any other information for that taxable or income year as the Franchise Tax Board may prescribe by forms and instructions.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that limited liability company under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) (1) A limited liability company shall file with its return required under subdivision (a), in the form required by the Franchise Tax Board, the agreement of each nonresident member to file a return pursuant to Section 18501, to make timely payment of all taxes imposed on the member by this state with respect to the income of the limited liability company, and to be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the member by this state with respect to the income of the limited liability company. If the limited liability company fails timely to file the agreements on behalf of each of its nonresident members, then the limited liability company shall, at the time set forth in subdivision (f), pay to this state on behalf of each nonresident member of whom an agreement has not been timely filed an amount equal to the highest marginal tax rate in effect under Section 17041 in the case of members which are individuals, estates, or trusts, and Section 23151 in the case of members which are corporations, multiplied by the amount of the member's distributive share of the income source to the state reflected on the limited liability company's return for the taxable period. A limited liability company shall be entitled to recover the payment made from the member on whose behalf the payment was made.

(2) If a limited liability company fails to attach the agreement or to timely pay the payment required by paragraph (1), the payment shall be considered the tax of the limited liability company for purposes of the penalty prescribed by Section 19132 and interest prescribed by Section 19101 for failure to timely pay tax. Payment of the penalty and interest imposed on the limited liability company for failure to timely pay the amount required by this subdivision shall extinguish the liability of a nonresident member for the penalty and interest for failure to make timely payment of all taxes imposed on



that member by this state with respect to the income of the limited liability company.

(3) No penalty or interest shall be imposed on the limited liability company under paragraph (2) if the nonresident member timely files and pays all taxes imposed on the member by this state with respect to the income of the limited liability company.

(f) Any agreement of a nonresident member required to be filed pursuant to subdivision (e) shall be filed at either of the following times:

(1) The time the annual return is required to be filed pursuant to this section for the first taxable period for which the limited liability company became subject to tax pursuant to Chapter 1.6 (commencing with Section 23091).

(2) The time the annual return is required to be filed pursuant to this section for any taxable period in which the limited liability company had a nonresident member on whose behalf such an agreement has not been previously filed.

(g) Any amount paid by the limited liability company to this state pursuant to paragraph (1) of subdivision (e) shall be considered to be a payment by the member on account of the income tax imposed by this state on the member for the taxable period.

(h) Every limited liability company that is classified as a corporation for California tax purposes shall be subject to the requirement to file a tax return under the provisions of Part 10.2 (commencing with Section 18401) and the applicable taxes imposed by Part 11 (commencing with Section 23001) including Section 23221 relating to the prepayment of the minimum tax to the Secretary of State.

SEC. 28. Section 23092 of the Revenue and Taxation Code is amended to read:

23092. (a) In addition to the tax imposed under Section 23091, every limited liability company subject to tax under Section 23091 shall pay annually to this state a fee equal to:

(1) Five hundred dollars (\$500), if the total income from all sources reportable to this state for the taxable year is two hundred fifty thousand dollars (\$250,000) or more, but less than five hundred thousand dollars (\$500,000).

(2) One thousand dollars (\$1,000), if the total income from all sources reportable to this state for the taxable year is five hundred thousand dollars (\$500,000) or more, but less than one million dollars (\$1,000,000).

(3) Two thousand dollars (\$2,000), if the total income from all sources reportable to this state for the taxable year is one million dollars (\$1,000,000) or more, but less than five million dollars (\$5,000,000).

(4) Four thousand dollars (\$4,000), if the total income from all sources reportable to this state for the taxable year is five million dollars (\$5,000,000) or more.

(5) This subdivision shall be operative for taxable years beginning on or before December 31, 1995.

(b) In addition to the tax imposed under Section 23091, every limited liability company subject to tax under Section 23091 shall pay annually to this state a fee equal to:

(1) Five hundred dollars (\$500), if the total income from all sources reportable to this state for the taxable year is two hundred fifty thousand dollars (\$250,000) or more, but less than five hundred thousand dollars (\$500,000).

(2) One thousand five hundred dollars (\$1,500), if the total income from all sources reportable to this state for the taxable year is five hundred thousand dollars (\$500,000) or more, but less than one million dollars (\$1,000,000).

(3) Three thousand dollars (\$3,000), if the total income from all sources reportable to this state for the taxable year is one million dollars (\$1,000,000) or more, but less than five million dollars (\$5,000,000).

(4) Four thousand five hundred dollars (\$4,500), if the total income from all sources reportable to this state for the taxable year is five million dollars (\$5,000,000) or more.

(5) This subdivision shall apply to taxable years beginning on or after January 1, 1996.

(c) (1) For purposes of this section, “total income” means gross income, as defined in Section 24271, plus the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer.

(2) In the event a taxpayer is a commonly controlled limited liability company, the total income from all sources reportable to this state, taking into account any election under Section 25110, may be determined by the Franchise Tax Board to be the total income of all the commonly controlled limited liability company members if it determines that multiple limited liability companies were formed for the primary purpose of reducing fees payable under this section. A determination by the Franchise Tax Board under this subdivision may only be made with respect to one limited liability company in a commonly controlled group. However, each commonly controlled limited liability company shall be jointly and severally liable for the fee. For purposes of this section, commonly controlled limited liability companies shall include the taxpayer and any other partnership or limited liability company doing business (as defined in Section 23101) in this state and required to file a return under Section 18633 or 18633.5, in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.



(d) The fee assessed under this section shall be due and payable on the date the return of the limited liability company is required to be filed under Section 18633.5, shall be collected and refunded in the same manner as the taxes imposed by this part, and shall be subject to interest and applicable penalties.

SEC. 29. It is the intent of the Legislature that existing business entities, such as partnerships and corporations, be permitted to convert into or transfer real property to, limited liability companies without incurring a documentary transfer tax provided that the direct or indirect proportionate interests in the property remain the same.

SEC. 30. Nothing in this act nor Chapter 1010 or Chapter 1200 of the Statutes of 1994 shall be construed to permit a domestic or foreign limited liability company to render professional services, as defined in subdivision (a) of Section 13401 of the Corporations Code, in this state.

SEC. 31. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 32. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary clarifications to the Beverly-Killea Limited Liability Company Act, consistent with rulings of the Internal Revenue Service, and in order that the Beverly-Killea Limited Liability Company Act is fully effective, it is necessary that this act take effect immediately.

